IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.922 OF 2005

Chandrakant Govind Kotkar)
Wadilal, Plot No.6, Shivnagar,)
L.B.S. Marg, Ghatkopar (W),)
Mumbai - 400 086) .....Petitioner.

V/s

1. M/s. Bombay Intelligence)
Security (India) Ltd.,)
9/A/3, Leela Shah Co. Op.)
Housing Society Limited,)
Gaondevi Rd., Ghatkopar (W),)
Mumbai 400 086.)
)
2. Shri P.K. Chavare,)
Hon'ble Industrial Court,)
Administrative Bldg., Bandra)
Mumbai.) ....Respondents.

Mr. S.N. Deshpande for the Petitioner.

Mr. K.S. Bapat with Mr. R.D. Suvarna for Respondent No.1.

CORAM: V.M. KANADE, J.
DATE : 3rd April, 2007

ORAL JUDGMENT:

1. The Petitioner was serving with Respondent No.1 as a watchman since 1980. The services of the Petitioner were terminated with effect from 23/07/1990. He raised an

industrial dispute for his reinstatement and consequential benefits and, therefore, the Government was pleased to refer the matter to the Labour Court vide Reference (IDA) No.568 of 1992. The Labour Court by an award dated 23/12/1996 directed that the Petitioner be reinstated with full back wages and with continuity of service with effect from 23/07/1990. The award was published by the State Government on 12/02/1997.

2. After the award was published, it is alleged by the Respondent No.1 that there was a settlement between the parties on 17/02/1997 whereby the Petitioner gave up his right of reinstatement with full back-wages and that an amount Rs 15,000/- was paid by cheque alongwith cash amount of Rs 10,000/- in the presence of representative of the Petitioner Shri Lobo and the representative of the Company and Shri Pathak, the advocate on behalf of the Company. This fact, however is the main dispute which is subsequently agitated by both the parties up to this Court.

3. After the award was published on 12/02/1997, the

Petitioner sent a letter to the Respondent No.1 on 04/03/1997 for implementation of the award. On 11/03/1997, Respondent No.1 gave a reply to the said letter and stated that there was no question of implementation of the award as there was a settlement between the parties in the presence of the representative of the Petitioner and the Company. Thereafter, on 21/03/1997, the Petitioner's advocate gave a reply to the letter of Respondent No.1, denying that there was any settlement between the parties.

4. Petitioner, thereafter, filed a complaint (ULP) No.338 of 1997 on 15/04/1997 under item Nos. 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practices Act, 1971 before the Industrial Court for implementation of the award.

5. Respondent No.1 filed its Written Statement and refused to implement the award and submitted that question of implementation of the award did not arise on account of the settlement between the partied dated 17/02/1997. Parties led evidence by way of affidavits and the Industrial

Court dismissed the complaint, holding that in view of the settlement dated 17/02/1997 there was no question of issuing direction to Respondent No.1 to implement the said award.

6. Being aggrieved by the said oder, the Petitioner preferred this Writ Petition under Article 226 of the Constitution of India.

7. Shri Deshpande, the learned Counsel appearing on behalf of the Petitioner, submitted that the Industrial Court had committed an error of law which is apparent on the face of record and also had failed to exercise jurisdiction which is vested in it by law. He invited my attention to the relevant provisions and submitted that it was not open for the Industrial Court to go behind the award and the only course of action which was open to the Industrial Court was to see whether award has been passed by the Labour Court and further to take steps to implement the said award. He submitted that the Industrial Court had not taken into consideration provisions of section 2(p) of the Industrial

Disputes Act, 1971 alongwith other relevant provisions and, therefore, had misdirected itself in trying to find out whether there was a settlement between the parties. He submitted that, even otherwise, assuming that the Industrial Court had the jurisdiction to consider the alleged settlement between the parties, it ought to have seen that the settlement was not in the prescribed form and not in the presence of the responsible third party such as the reconciliation officer and, therefore, the said settlement was void-ab-initio. He submitted that it was also not in accordance with Form No.60 which was a prescribed form for executing settlement between the parties. He invited my attention to the provisions of section 17(2) and item No.9 of the Schedule. He relied upon the Judgment of the Supreme Court in the case of Western India Match Company Ltd. Vs. Workmen reported in **1973 II LLJ 403.** He invited my attention to the impugned order which was passed by the Industrial Court. He submitted that, even on merits, it could be seen from the cross-examination of Shri Lobo that, initially, he had represented the Petitioner and later on was examined as witness for Respondent No.1. He, in his cross-examination,

was not in a position to throw any light regarding the settlement. He invited my attention to the portion of the cross-examination where admission to that effect was given by Shri Lobo. He relied upon the following judgments viz. Phannindra Chandra Roy Vs. Calcutta State Transport Corporation & Ors reported in **1991 I CLR 32,** B.S.E. Board Vs. Chakkradhar Prasad Singh and Others reported in **1990 LAB. I.C. 788,** Mafatlal Engineering Industries Ltd Vs. Mafatlal Engg. Ind. Empl. Union and Ors reported in **1992 I CLR 418,** Co-operative Store Ltd. Vs. Ved Prakash Bhambri reported in **1989 II CLR 315** and also on the judgment in the case of Central Inland Water Transport Corporation Limited Vs. Brojonath Ganguli & Anr., reported in **1986 II CLR 322.**

8. Shri Bapat, the learned Counsel appearing on behalf of Respondent No.1, on the other hand, initially invited my attention to the sequence of events. He submitted that the correspondence between the parties and the chronology of events clearly indicated that the Petitioner had changed his stand from time to time. He led a particular emphasis on the fact that in a letter dated 04/03/1997, the Petitioner did not

make any reference to the cheque which he had received for an amount of Rs 15,000/- whereas, after the reply was given by Respondent No.1 on 11/03/1997 and this fact was brought to his notice, in the advocate's notice it was sought to be contended for the first time that the amount of Rs 15,000/- by cheque was given as an advance. He submitted that this clearly indicated that the Petitioner had suppressed this fact in his earlier letter and had subsequently changed his stand on the advice given by his advocate. He further invited my attention to the Written Statement in which, at the very outset, it was stated that the Respondent No.1 was willing to take the Petitioner back in service. However, the Petitioner had not responded favourably. He then submitted that the settlement was executed in the presence of his own representative viz. Shri Lobo who was Union representative and also in the presence of Company's representative and Company's advocate Shri Pathak. He then invited my attention to the cross-examination of the Petitioner and stated that when a question was asked to the Petitioner whether he had any grievance against Shri Pathak or whether he had made any complaint against him. The

Petitioner had given a reply that he had no grievance against the Company's representative and the advocate on behalf of the Company Shri Pathak. Shri Bapat, the learned Counsel appearing on behalf of Respondent No.1 submitted that this was another circumstance which clearly indicated that the only intention of the Petitioner was to knock out some more money from the Company after having accepted the amount of Rs 15,000/- by cheque and Rs 10,000/- by cash which was duly authenticated through two vouchers which were exhibited by them.

9. So far as the legal aspect is concerned, Shri Bapat, the learned Counsel, invited my attention to the preamble of the Act and submitted that the preamble itself clearly indicated that the Act was passed for the purpose of settlement of disputes and he submitted that, therefore, if the settlement had been arrived at between the parties then it should not be defeated on mere technicalities. He then invited my attention to the definition of the word "industrial dispute" defined in section 2(k) and submitted that even if there is a single employee, the dispute can be settled through the

machinery provided under the Act. He then invited my attention to the provisions of section 2(p) which defines the word “settlement”. He submitted that requirement of making settlement in the prescribed form was not mandatory but was directory and the words which were used in the section do not indicate that the provisions were intended to be mandatory because the word “shall” had not been used in the said section. He then invited my attention to the provisions of section 18(1) and 18(3) of the said Act. He submitted that the provisions of section 18(1) did not contemplate that the settlement should necessarily be in the presence of the Conciliation Officer. In support of his submission that provisions of section 25E are not mandatory but are directory, he referred to the provisions of sections 25E and 25F. He submitted that under the said provisions of section 25F also, modalities which have to be complied with have been laid down and that it was prescribed under the said clause that a notice in the prescribed manner should be served on the appropriate Government or such authority as specified by the appropriate Government by notification in the official gazette. He submitted that while construing the

effect of the said provision the Supreme Court held that sub-clause (c) of Section 25F was not mandatory and, therefore by the same analogy he submitted that section 2(p) was a requirement which was not mandatory. In support of the said submission, he relied upon the judgment of the Supreme Court in the case of Bombay Union of Journalists and others Vs. The State of Bombay and another reported in **AIR 1964 SC 1617.** He relied upon para 12 of the said Judgment wherein it is observed that clause (c) of section 25F is not mandatory.

> "(12) In this connection, there is one more consideration which is relevant. We have already seen the requirement of S. 25F (a). There is a proviso to S. 25F(a) which lays down that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of services. Clause (a) of S. 25F, therefore, affords a safeguard in the interests of the retrenched employee; it requires the employer either to give him one

month's notice or to pay him wages in lieu thereof before he is retrenched. Similarly, clause (b) provides that the workman has to be paid at the time of retrenchment, compensation which shall be equivalent to 15 day's average pay for every completed year of service or any part thereof in excess of six months. It would be noticed that this payment has to be made at the time of retrenchment and this requirement again provides a safeguard in the interests of the workman; he must be given one month's notice or wages in lieu thereof and he must get retrenchment compensation as prescribed by clause (b). The object which the Legislature had in mind in making these two conditions obligatory and in constituting them into conditions precedent is obvious. These provisions have to be satisfied before a work-man can be retrenched. The hardship resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them

> conditions precedent. The same cannot be said about the requirement as to clause (c). Clause (c) is not intended to protect the interests of the workman as such. It is only intended to give intimation to the appropriate Government about the retrenchment, and that only helps the Government keep itself informed about the conditions of employment in the different industries within its region. There does not appear to be present any compelling consideration which would justify the making of the provision prescribed by clause (c) a condition precedent as in the case of clauses (a) and (b). Therefore, having regard to the object which is intended to be achieved by clauses (a) and (b) as distinguished from the object which clause (c) has in mind, it would not be unreasonable to hold that clause (c), unlike clauses (a) and (b), is not a condition precedent."

10. The learned Counsel appearing on behalf of Respondent

No.1 also tried to distinguish the judgments on which reliance has been placed by the learned Counsel appearing on behalf of the Petitioner.

11. I have given my anxious consideration to the submissions made by the learned Counsel appearing for the Petitioner and the learned Counsel appearing for Respondent No.1. The facts in the present case, except the alleged fact of settlement, are admitted facts.

12. Two questions which fall for consideration before this Court are (a) whether the Industrial Court refused to exercise jurisdiction vested in it by law as alleged by the petitioner and (b) whether the alleged settlement dated 17/02/1997 between the parties was legal and proper settlement in the eyes of law.

13. So far as the first question is concerned, before examining the facts and the legal submissions made by both the parties, it would be relevant to have a look at the impugned order. The Industrial Court has framed the

following point for determination:-

> "Does the Complainant prove that he was cheated by the Respondent Nos. 1, 2 & 3 and the documents styled as settlement, etc. were got signed from him?

In a very brief order, the Industrial Court has come to the conclusion that the Petitioner herein had not proved that the fact of the said settlement was false, fabricated or bogus. In my view, the Industrial Court has clearly erred in coming to the said conclusion. The Industrial Court, in my view, has not addressed to itself to the main issue involved which was required to be answered by the Industrial Court before examining the dispute regarding settlement.

14. It would be relevant to consider the definition of the word "settlement" as defined under section 2(p) of the Act which reads as under:-

> 2. Definitions - xxxxxxxxxx
> (p) "settlement" means a settlement

> arrived
> at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;]"

The second provision which also has to be taken into consideration is section 17 of the said Act which reads as under:-

> "17. **Publication of reports and awards.-**
> (1) Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the

> appropriate Government, be published in such manner as the appropriate Government thinks fit.
> (2) Subject to the provisions of Section 17A, the award published under sub-section (1) shall be final and shall not be called in question by any court in any manner whatsoever."

It is clearly laid down in sub-clause (2) of section 17 that subject to provisions of section 17A, the award published under subsection (1) shall be final and shall not be called in question by any court in any manner whatsoever. The third provision which is relevant for the purpose of deciding this issue is item No.9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. Item No.9 reads as under:-

> "9. Failure to implement award, settlement or agreement."

15. A perusal of the said order passed by the Industrial Court clearly reveals that this issue has not been considered

by the Industrial Court and straight way the Industrial Court has tried to go behind the award and arrived at a finding that the said settlement was not bogus as alleged by the Petitioner. The Industrial Court ought to have applied its mind to the provisions of section 17 sub-clause (2) and the other relevant provisions which are mentioned hereinabove, after having examined them in the light of facts and circumstances of the case. The impugned order therefore is liable to be set aside.

16. Accordingly Writ Petition is allowed. The impugned order is set aside. The matter is remanded back to the Industrial Court with a direction to decide the same as expeditiously as possible and, in any case, within a period of one year. The Industrial Court shall decide the case in accordance with law as indicated hereinabove and also decide all other contentions which have been raised by the Petitioner and the Respondent No.1 in this Petition.

(V. M. KANADE, J.)